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CONFIDENTIAL

In The Matter Of:

*Carol A. Connor, et al., v.
The American Tobacco Co., et al.*

*Randy Morris
May 15, 1997*

*Waga & Spinelli
4 Becker Farm Road
Roseland, NJ 07068
(201) 992-4111 FAX: (201) 992-0990*

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[1] SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
[2] STATE OF NEW MEXICO
[3] CAROL A. CONNOR, and MARY No. CV-96-0009422
BETH HOPKINS, natural
[4] guardian (mother) and next Deposition of:
friend of MARCUS G.
[5] HOPKINS, A MINOR, and all RANDY MORRIS
others similarly situated;
[6] Plaintiffs,
[7] vs
[8] THE AMERICAN TOBACCO
[9] COMPANY, et al.,
[10] Defendants.
[11] TRANSCRIPT of testimony as taken by and
[12] before LEE A. BURSTEN, a Registered Professional
[13] Reporter and Notary Public, at Conlon, Frantz,
[14] Phelan & Knapp, 1818 N Street, N.W., Washington,
[15] D.C., on Thursday, May 15, 1997, commencing at
[16] 2:05 in the afternoon.
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[18]
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[24]
[25]

[1] APPEARANCES:
[2]
[3] WAITE, SCHNEIDER, BAYLESS &
CHESLEY CO. L.P.A.
Castano Tobacco Litigation
[4] Energy Centre - 30th Floor
1100 Poydras Street
[5] New Orleans, Louisiana 70163-3000
BY: SHERRILL HONDORF, ESQ.
[6] For the Plaintiffs
[7] BRANCH LAW FIRM
2025 Rio Grande Boulevard, N.W.
[8] Albuquerque, New Mexico 87104
BY: ELIZABETH C. McCOURT, ESQ.
[9] For the Plaintiffs
[10] COVINGTON & BURLING
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566
[11] BY: ETHAN M. POSNER, ESQ.
[12] AND: PATRICK S. DAVIES, ESQ.
For The Tobacco Institute
[13]
SHOOK, HARDY & BACON L.L.P.
[14] One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105-2118
[15] BY: LAURA CLARK FEY, ESQ.
[16] For Loews Corporation, Lorillard
Tobacco Company, Lorillard, Inc.,
[17] Philip Morris Inc., Philip Morris
Companies, Inc.
[18]
[19]
[20]
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(1) RANDY MORRIS,
(2) [deleted]
(3)
(4) EXAMINATION BY MS. HORNDORF:
(5) Q: Mr. Morris, we met earlier. I'm
(6) Sherrill Horndorf. I represent plaintiffs in
(7) many cases, although counsel across the table
(8) disputes that. But I represent plaintiffs in the
(9) New Mexico case. I'm taking your deposition
(10) today.
(11) MR. POSNER: Before you start.
(12) Sherrill, just so we're clear, I overall have the
(13) same continuing objections on the jurisdictional
(14) issues that I raised this morning, just to be
(15) sure the record is clear. I want to preserve
(16) those continuing objections.
(17) MS. FEY: For the record as well I
(18) would object to using this deposition in any case
(19) other than the Connor case because of failure to
(20) notify defendants, including Loews Corporation
(21) and all the other defendants.
(22) MS. McCOURT: Do you want me to fax
(23) you what I faxed your co-counsel in New Mexico?
(24) MS. FEY: I have the May 9th
(25) deposition notice. Is that what you're talking

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(1) about?
(2) MR. POSNER: That's in the Connor
(3) case.
(4) MS. McCOURT: I have May 12th also.
(5) MS. HONDORF: But we can clear this
(6) up. All of your conversations with cross notice
(7) were with the local Tobacco Institute. Were they
(8) telephonic?
(9) MS. McCOURT: Fax and telephone and
(10) mail.
(11) MS. HONDORF: We have all that
(12) attached?
(13) MS. McCOURT: I don't have it with
(14) me.
(15) MS. FEY: As I read it, this
(16) deposition notice doesn't advise that this
(17) deposition is being taken for purposes of any
(18) case other than Connor.
(19) MS. McCOURT: Then I misunderstood
(20) what you were talking about. I thought you were
(21) saying you hadn't received any notice.
(22) MS. FEY: I received the deposition
(23) notice. I didn't receive any notice that this
(24) deposition was cross noticed for use in any other
(25) cases. And on that ground I object on behalf of

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(1) all of my clients.
(2) MS. HONDORF: The reason why you
(3) never received any notice is because it was never
(4) agreed to, and it has never been agreed to, that
(5) we're going to use this deposition anywhere. So
(6) I think you all are jumping the gun. But we'll
(7) cross that bridge when we get to it.
(8) BY MS. HONDORF:
(9) Q: Mr. Morris, I'm Sherrill Hondorf,
(10) like I said. Let me ask you one preliminary
(11) question. Are taking any medications today?
(12) A: No.
(13) Q: Are you taking any that would affect
(14) your testimony today?
(15) A: No.
(16) Q: Have you had your deposition taken
(17) before?
(18) A: No.
(19) Q: Well, I'll explain to you how it
(20) works. I ask you questions. You answer. You're
(21) supposed to answer unless your counsel advises
(22) you not to answer.
(23) He may make an objection, but you're
(24) still required to answer the question unless he
(25) instructs you not to. If any of my questions are

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(1) unclear. I will certainly be happy to clarify
(2) them for you or rephrase them. And if you don't
(3) understand a question, please advise me. That's
(4) pretty much the ground rules.

(5) Can you tell me your history with
(6) the Tobacco Institute?

(7) A: Yes. I started in September of 1990 as a
(8) regional director.

(9) Q: And what were your duties as a
(10) regional director?

(11) A: Working with the regional vice president
(12) in the states we were assigned.

(13) Q: And what does that entail, working
(14) with the regional vice president?

(15) A: Coordinating the lobbying activities of
(16) the Institute in the states we were assigned.

(17) Q: I understand you're not the
(18) registered lobbyist in New Mexico for -

(19) A: That's correct.

(20) Q: Are all your duties lobbying duties?

(21) A: Yes. I mean, I manage the regional
(22) office, but that's what I do. I coordinate the
(23) lobbying activities in my region.

(24) Q: What do those lobbying activities
(25) entail?

(1) A: I've never seen that.

(2) Q: Have you ever seen a definition of
(3) lobbying?

(4) A: Probably.

(5) Q: Where?

(6) A: Where?

(7) Q: Yes.

(8) A: Probably in a law book or a case book
(9) somewhere, statute. But I don't remember ever
(10) seeing a New Mexico definition.

(11) Q: Do you communicate with the public
(12) at all?

(13) A: Myself?

(14) Q: Yes.

(15) A: No. I mean, you know, we get phone calls
(16) occasionally. Usually wrong numbers, asking
(17) if - asking who we are, that kind of thing.

(18) Q: You never talk to a consumer?

(19) MR. POSNER: Consumer of what?

(20) THE WITNESS: Of what?

(21) MS. HONDORF: Of cigarettes.

(22) THE WITNESS: Occasionally.

(23) BY MS. HONDORF:

(24) Q: And how would that communication
(25) arise?

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(1) A: The Institute has contract lobbyists in
(2) each of the states. And we work with those folks
(3) to represent the Institute's interests.

(4) Q: Do you do anything besides that
(5) activity?

(6) A: I have a secretary, and I manage her and
(7) keep track of the office.

(8) Q: And do you have contact with
(9) wholesalers and distributors?

(10) A: Yes.

(11) Q: And do you consider that to be
(12) lobbying activity?

(13) A: Yes.

(14) Q: Do you consider that to be lobbying
(15) activity because you were told to consider it
(16) lobbying activity, or because it is lobbying
(17) activity?

(18) MR. POSNER: I object to the form,
(19) counsel. Come on. He's told you that he
(20) considers it lobbying activity.

(21) BY MS. HONDORF:

(22) Q: Let me ask you this question. What
(23) definition of lobbying do you operate under? Do
(24) you operate under the definition of lobbying as
(25) New Mexico defines it?

(1) A: If we were asked to speak at a gathering
(2) such as a wholesaler's meeting. Some of those
(3) people are consumers. Some are not.

(4) Q: Do you have the same position today
(5) that you had in 1990?

(6) A: No.

(7) Q: I asked you to give me a history, so
(8) let's work our way up from 1990.

(9) A: I just started. I became a regional vice
(10) president in November of 1991. And that's what I
(11) am today.

(12) Q: And is there a job description of a
(13) regional vice president anywhere that you're
(14) aware of, or is it just something that you
(15) understand your job to be?

(16) A: They may have it in their employment
(17) manual. I don't remember seeing it.

(18) Q: You don't remember ever getting an
(19) employment manual?

(20) A: Yes, I have an employment - it has health
(21) benefits, that kind of thing. I don't think it
(22) has a job description in that.

(23) Q: So - go ahead.

(24) A: I just don't know off the top of my head.

(25) Q: Your understanding of your duties as

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(1) a regional vice president are?
(2) A: I communicate with our lobbyists in the
(3) states that I'm assigned to. We carry out the
(4) interests, protect the interests and carry out
(5) the mission assigned to us by the Tobacco
(6) Institute. I coordinate and work with my
(7) superior at TIDC, and that's who I take my
(8) instruction from.
(9) Q: What's TIDC?
(10) A: Tobacco Institute, D.C. That's where the
(11) headquarters is.
(12) Q: Where are you based? Where is your
(13) headquarters?
(14) A: Denver. Denver area. We're in a place
(15) called Parker.
(16) Q: So you don't live in D.C.?
(17) A: Oh, no.
(18) Q: Did you consult with any lawyers
(19) before this deposition?
(20) A: Of course.
(21) Q: And lawyers in this room?
(22) A: Yes.
(23) Q: Did you consult any documents before
(24) this deposition?
(25) A: Looked at a few.

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(1) Q: Were they provided to you by your
(2) lawyers?
(3) A: Yes.
(4) MS. HONDORF: Are they documents
(5) that are work protected, or what?
(6) MR. POSNER: We certainly take the
(7) position that any documents we show the witness
(8) to prepare for the deposition are presumptively
(9) privileged. I don't think there's any dispute
(10) about that.
(11) BY MS. HONDORF:
(12) Q: Did you have any practice deposition
(13) or anything?
(14) A: A practice - no.
(15) Q: Are you responsible for the
(16) placement of any promotional information for the
(17) Tobacco Institute in trade magazines?
(18) A: No.
(19) Q: Are you aware that any of that
(20) activity goes on?
(21) A: I'm not certain what you mean by
(22) "promotional."
(23) Q: I mean advertising, but I've been
(24) having trouble with that word this morning.
(25) A: Okay.

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(1) Q: Do you place any advertisements in
(2) any of the wholesaler or distribution journals?
(3) MR. POSNER: I object to the form.
(4) counsel.
(5) THE WITNESS: I'm trying to think.
(6) Some of the associations - I mean, we support
(7) the wholesaler association, and sometimes they'll
(8) put a little notice in their program, you know.
(9) thank you, Tobacco Institute, for supporting us.
(10) I guess if you consider that to be promotional,
(11) that would be involved.
(12) BY MS. HONDORF:
(13) Q: When you say "support the
(14) wholesalers," what does that mean?
(15) A: We work with them, contribute money from
(16) time to time to help their organization.
(17) Q: Contribute money to the wholesalers?
(18) A: Sure.
(19) Q: And in what form? Cash? I mean,
(20) checks -
(21) A: Checks.
(22) Q: I don't understand. Why would you
(23) give money to a wholesaler?
(24) MR. POSNER: Counsel, you know what
(25) our position is with respect to lobbying

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(1) activities. I'm prepared to allow you to ask
(2) whether TI contributes to the wholesalers. But
(3) getting into the reasons why that is obviously in
(4) our view invades the lobbyist issue.
(5) MS. HONDORF: We don't agree that's
(6) lobbying activity.
(7) BY MS. HONDORF:
(8) Q: Are you aware of programs by the
(9) Tobacco Institute, Helping Youth Decide?
(10) A: I've heard of it.
(11) Q: You know what it is?
(12) A: I think that was a series of brochures or
(13) pamphlets.
(14) Q: Were you responsible for
(15) distributing any of that material?
(16) A: No.
(17) Q: What about the program called It's
(18) the Law?
(19) A: I'm aware of that program.
(20) Q: Were you responsible for
(21) distributing any of that material?
(22) A: Not directly, no.
(23) Q: What does that mean, "not directly"?
(24) Indirectly?
(25) A: We worked with the wholesalers in the

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(1) early 1990s when that program came out.
(2) Q: Did you give them the material for
(3) that?
(4) A: It's possible I might have given some.
(5) But generally what happened was, this is a
(6) national public education campaign. If we got a
(7) request in the office, we would pass that on to
(8) D.C., and D.C. then would turn around and,
(9) whatever the materials came out of, vendor house,
(10) would actually order it.
(11) I think it's quite possible they may
(12) have sent us some to pass on. But most of the
(13) time they went directly from the vendor to the
(14) people requesting it.
(15) Q: Did you ever go to any of the
(16) retailers and see how it was displayed, any of
(17) this material?
(18) MR. POSNER: In New Mexico or
(19) anywhere?
(20) MS. HONDORF: In New Mexico.
(21) THE WITNESS: Are we talking about
(22) the It's the Law program?
(23) MS. HONDORF: Yes.
(24) MR. POSNER: And she's talking about
(25) retailers in New Mexico.

(1) Q: You seemed to hesitate.
(2) A: It doesn't ring a bell.
(3) Q: Well, just review this and tell me
(4) whether it rings a bell, and if not we won't even
(5) attach it.
(6) A: This is a document that's dated 1988.
(7) before I started.
(8) Q: Okay.
(9) A: I don't remember ever seeing this before.
(10) Q: Okay.
(11) MR. POSNER: Was this marked as an
(12) exhibit in Mr. Adams's deposition?
(13) MS. HONDORF: Yes.
(14) BY MS. HONDORF:
(15) Q: Helping Youth Say No, have you heard
(16) of that program?
(17) A: Yes.
(18) Q: What does that program entail?
(19) A: I think, again, that was a series of
(20) brochures or pamphlets that were sent out where
(21) people asked about it.
(22) Q: And did you distribute any of that
(23) information?
(24) A: No.
(25) Q: Operation Dial, have you ever heard

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(1) THE WITNESS: I never went in
(2) purposely in New Mexico to see it. From time to
(3) time when I've been there I think I saw some of
(4) the material in retailers who, if you buy a can
(5) of pop, it would be on the door or a window, a
(6) sign would be.
(7) BY MS. HONDORF:
(8) Q: You testified just a minute ago that
(9) the It's the Law program was a national public
(10) education program.
(11) A: Right.
(12) Q: What was your understanding of the
(13) function of that program?
(14) A: It was to dissuade - help dissuade
(15) retailers from selling the product, tobacco, to
(16) people who were underage and to help retailers in
(17) avoiding those illegal sales.
(18) Q: Have you heard about a program
(19) called Enough Is Enough?
(20) A: No.
(21) Q: A program called Responsible Living?
(22) A: No.
(23) Q: How about the Great American
(24) Welcome?
(25) A: No.

(1) of that?
(2) A: No.
(3) Q: How about Take Action Now, are you
(4) familiar with that?
(5) A: No.
(6) Q: It's also called the Tobacco Action
(7) Network.
(8) A: That I have heard of.
(9) Q: What does that entail?
(10) A: What do I understand it to be?
(11) Q: Certainly.
(12) A: TAN, as it was referred to, if I recall
(13) correctly, was a grassroots type operation, years
(14) ago in the '80s.
(15) Q: It's no longer current?
(16) A: Not to my knowledge. It was before my
(17) time.
(18) Q: Do you have any dealings in the
(19) State of New Mexico with any anti-smoking
(20) organizations?
(21) A: Do I personally?
(22) Q: Do you as a representative of the
(23) Tobacco Institute?
(24) A: No.
(25) Q: So it's your testimony that these

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(1) national education programs that are current -
(2) let's lay a foundation with ones are current. Is
(3) Helping Youth Decide a current program that
(4) you're aware of?
(5) A: I don't think it is.
(6) Q: What about It's the Law?
(7) A: No.
(8) Q: Tobacco Youth Initiatives, have you
(9) ever heard of that?
(10) A: No.
(11) Q: Enough Is Enough, you said you had
(12) never heard of that one.
(13) A: No.
(14) Q: Responsible Living, you never heard
(15) of that one.
(16) A: Right.
(17) Q: The Great American Welcome. How
(18) about Helping Youth Say No, is that a current
(19) program?
(20) A: There may be some brochures that D.C.
(21) still has and sends out, but I'm not aware of
(22) them being current.
(23) Q: If they were current, were any of
(24) them current?
(25) A: Helping Youth Say No and It's the Law were

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(1) announced in late 1990 after I joined.
(2) Q: But you didn't participate in the
(3) distribution of any of this information?
(4) A: As I explained earlier, yes. If one of
(5) our folks we knew that ran a wholesaler
(6) installation would call and say we need some
(7) brochures of It's the Law, we would put a call in
(8) to D.C. and they would be shipped out. Most of
(9) the time those would come directly from the
(10) vendor out to the party requesting them.
(11) But I think there's probably some
(12) times where they came to us and we gave them.
(13) Not in New Mexico.
(14) Q: But it was not part of your lobbying
(15) duties to distribute this information?
(16) A: That's correct.
(17) MR. POSNER: I object to the form.
(18) BY MS. HONDORF:
(19) Q: I forgot to ask you your address.
(20) A: [DELETED]
(21) Q: Yes.
(22) A: [DELETED]
(23) Q:
(24) A:
(25) Q: Are you the only person in that

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(1) office?
(2) A: No.
(3) Q: How many employees are there?
(4) A: Just myself and my secretary, field
(5) secretary, office manager.
(6) Q: And your territory is -
(7) A: I have eight states in the Rocky Mountain
(8) West, Colorado, Wyoming, Montana, Idaho, Utah,
(9) Nevada, New Mexico and Arizona.
(10) Q: I've got to get back to this. We
(11) were produced these two documents as part of
(12) another smaller document production yesterday.
(13) Who is William Daigle, do you know?
(14) A: Who?
(15) Q: William Daigle, D-A-I-G-L-E.
(16) A: I've never heard of him.
(17) Q: Is he from the Tobacco Institute
(18) Testing Laboratory? It says so on this. I
(19) really don't know what these are.
(20) A: I've never met him. I've heard of the
(21) testing lab. But I don't know anything about it.
(22) Q: You don't know anything about the
(23) Tobacco Institute Testing Lab?
(24) A: Right.
(25) Q: Except that it exists?

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(1) A: Right.
(2) Q: Do you know who funds it?
(3) A: No.
(4) MR. POSNER: This is a document that
(5) we provided, TICN number 17. Was this marked as
(6) an exhibit in Mr. Adams's deposition this
(7) morning?
(8) MS. HONDORF: No.
(9) BY MS. HONDORF:
(10) Q: Here we have a document that
(11) actually has your name on it. Why don't you
(12) explain to me what this is.
(13) MS. HONDORF: We'll mark that as the
(14) first exhibit. Let's mark it first.
(15) (Morris Deposition Exhibit Number 1
(16) was marked for identification.)
(17) THE WITNESS: This is a letter I got
(18) from Linda Pino with the New Mexico Municipal
(19) League, thanking us for support of their golf
(20) tournament in New Mexico.
(21) BY MS. HONDORF:
(22) Q: And that support is monetary?
(23) A: Right.
(24) Q: When you say you support
(25) wholesalers, is this what you meant?

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[1] A: Monetary?
[2] Q: Yes.
[3] A: Yes.
[4] Q: No, I mean, is this a wholesaler?
[5] A: Oh, no. This is the New Mexico Municipal
[6] League. I think they represent the cities and
[7] the state. And they were having a golf
[8] tournament, and we got a request to give them
[9] \$500, so we did.
[10] Q: And that's fairly standard practice?
[11] Because here is another letter from another year
[12] for somebody named Mr. Bowman.
[13] A: May I see that?
[14] Q: Certainly you can.
[15] A: Yes. We had done it before. That's
[16] correct.
[17] (Morris Deposition Exhibit Number 2
[18] was marked for identification.)
[19] THE WITNESS: Yes, this is from
[20] Stan - went to Stan Bowman the year before.
[21] Stan was, as you can see, formerly the regional
[22] vice president.
[23] BY MS. HONDORF:
[24] Q: Do you recall any other documents
[25] about that?

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[1] A: I don't recall other times, no. And I
[2] wouldn't know prior to 1990.
[3] Q: But you would know after 19 -
[4] A: Right. And I don't remember them asking.
[5] Q: Okay. How often do you go to New
[6] Mexico?
[7] A: An average of about two or three times a
[8] year.
[9] Q: What do you do when you're there?
[10] A: I go see Bob Barberousse.
[11] B-A-R-B-E-R-O-U-S-S-E. He's our long time
[12] legislative consultant, lobbyist, and he's an
[13] attorney in Santa Fe.
[14] Q: And that's all you do when you go
[15] there?
[16] A: Well, I have gone to the wholesaler. They
[17] sponsor a reception during session. And so
[18] sometimes the trips coincide with that. If I
[19] meet Bob, we go to dinner, or sometimes I've met
[20] him at the Capitol.
[21] Q: Do you have contacts with anybody
[22] who is not connected with the government when you
[23] go to New Mexico?
[24] A: Well, Bob is not connected with the
[25] government. He's a lobbyist. But other than

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[1] that, I'm not certain I understand the question.
[2] Q: Two or three times a year, is that
[3] only when the legislature is in session in New
[4] Mexico?
[5] A: No. Usually it's, you know, once during
[6] session. It's a relatively short session. I
[7] usually go once after session.
[8] Q: So you don't like have accounts you
[9] call on or anything?
[10] A: Accounts? No.
[11] Q: Like wholesalers or retailers or
[12] anything like that.
[13] A: Not in New Mexico.
[14] Q: Do you have those in other places?
[15] MS. HONDORF: He can say yes or no.
[16] I won't ask him about it.
[17] MR. POSNER: You can say yes or no.
[18] THE WITNESS: I don't think of
[19] people as accounts.
[20] BY MS. HONDORF:
[21] Q: I'm thinking more in terms of a
[22] salesman who makes -
[23] MR. POSNER: He's not a salesman.
[24] MS. HONDORF: I understand that.
[25] I'm explaining what I mean by "accounts."

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[1] BY MS. HONDORF:
[2] Q: Go ahead.
[3] A: There are in other states, yes, we work
[4] with retailers and wholesalers. In the State of
[5] New Mexico our contacts historically are very
[6] limited down there.
[7] Q: So you do not contact wholesalers
[8] and retailers down there?
[9] A: Well, when I'm at the legislative
[10] reception they host every January and February, I
[11] say hi to them, sure.
[12] Q: And that's the only contact you have
[13] with resalers and wholesalers in New Mexico?
[14] A: I met Truitt Gill, the last president of
[15] the New Mexico Retailer Association, once at the
[16] Capitol. Bob introduced me to him. He died.
[17] And I have talked to Sandy Godlove, who is now I
[18] understand the president of the New Mexico
[19] Grocers Association, on the phone.
[20] Q: Does New Mexico have any strictly
[21] tobacco retailer or wholesaler association?
[22] MR. POSNER: If you know.
[23] THE WITNESS: Well, do you
[24] understand what a wholesaler association is
[25] involving the industry?

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(1) - BY MS. HONDORF:
(2) Q: Probably not.
(3) A: I mean, usually they sell candy and
(4) tobacco.
(5) Q: Right.
(6) A: So it's not strictly tobacco.
(7) Q: Okay. So is there a candy and
(8) tobacco wholesaler -
(9) A: Right. There is an association.
(10) Q: And do you have any contact with
(11) those folks?
(12) A: Sure.
(13) Q: What form does that contact take?
(14) A: I usually talk to them a couple of -
(15) MR. POSNER: Wait - all right. You
(16) can answer that question.
(17) THE WITNESS: I usually talk to them
(18) by phone a couple of times a year. It's a very
(19) small association. There are two gentlemen who
(20) basically run it, and every year they help host
(21) the legislative reception during session.
(22) BY MS. HONDORF:
(23) Q: Do you give that association any
(24) money?
(25) A: We did.

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(1) Q: When did you stop?
(2) A: I think the last time was around the early
(3) '90s, around '92. We may have given it one more
(4) year after that, a contribution.
(5) Q: And what was that for?
(6) A: It was support. We do that in a number of
(7) states. The wholesaler associations are
(8) generally small businesses. They don't have a
(9) lot of money. And so the Institute, as part of
(10) its corporate policy, helps those associations.
(11) Q: I think you said in the very
(12) beginning of your testimony that you had a
(13) mission from the Tobacco Institute. Am I -
(14) A: A mission? I don't remember that. A
(15) mission?
(16) MR. POSNER: Why don't you just ask
(17) him whatever question you want to ask.
(18) BY MS. HONDORF:
(19) Q: I'll start over. The direction that
(20) your job takes is directed by the Tobacco
(21) Institute, is that correct?
(22) A: That's correct.
(23) Q: And how do you get your direction
(24) from the Tobacco Institute?
(25) A: Pat Donahoe, my current boss.

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(1) Q: And he or she is -
(2) A: He.
(3) Q: What's -
(4) A: He's a senior vice president. I believe
(5) it's senior VP. He runs the state activities
(6) division. And I'm a part of state activities.
(7) Q: Does that division have any books,
(8) brochures, pamphlets, or anything that they
(9) regularly pass out?
(10) MR. POSNER: To entities in New
(11) Mexico, or -
(12) MS. HONDORF: To anyone nationally.
(13) THE WITNESS: Not anymore. I mean,
(14) in the sense of you're talking about like what
(15) the state activities division does, that kind of
(16) thing?
(17) BY MS. HONDORF:
(18) Q: Well, for example, this morning we
(19) had a document we showed Mr. Adams. We'll be
(20) happy to get it out. I don't know what exhibit
(21) number it is. It listed a number of
(22) publications. One of them was the Heritage
(23) Series.
(24) A: Heritage Tobacco Series?
(25) Q: Yes.

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(1) A: Yes, I've seen that. But not in New
(2) Mexico.
(3) Q: But do any of them go to any of your
(4) states?
(5) A: Not anymore.
(6) Q: What does that mean, "not anymore"?
(7) A: Well, the regions have changed. The
(8) region I have today is much different than the
(9) one I had when I started as an RD in 1990.
(10) Q: Well, what was the region then?
(11) A: In 1990 when I came on board we had the
(12) following states: Colorado, Wyoming, New Mexico,
(13) Kansas, Oklahoma, Texas, and Missouri. I believe
(14) that's seven.
(15) Q: I didn't write them down.
(16) A: Those were the states we had back in 1990.
(17) 1991, there was a reorganization. At that time I
(18) became, as I mentioned to you earlier, the
(19) regional vice president.
(20) But the territory then changed. And
(21) I'm trying to remember the exact ones. At that
(22) time, after the '91 organization, I got Wyoming,
(23) Colorado, kept New Mexico, lost Kansas, Oklahoma,
(24) Texas and Missouri, picked up Utah, Nevada, and
(25) Arizona.

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[1] Q: Did your duties with respect to any
[2] of that territory change?
[3] A: No. Not since I've been regional vice
[4] president. And then that changed since then I
[5] think two more times.
[6] Q: Do you remember how it changed?
[7] A: Yes. I think I do. I can try to give it
[8] to you. In 1993 we had another reorganization.
[9] I picked up Kansas. it gave me a chance to go
[10] back home.
[11] So I picked up Kansas. kept my other
[12] states. and then. let's see. in 1990 - the end
[13] of '94 - yes, I think - for the '95 session -
[14] no, it was in the '95, for the '96 session, I
[15] picked up Idaho and lost Kansas, and - oh, at
[16] the end of '94 I also picked up Montana.
[17] Q: And that's the way it is today?
[18] A: Well, yes. We don't have Kansas anymore.
[19] Q: So you don't get to go home anymore.
[20] A: Right. The only way to get to Topeka is
[21] you go to Kansas, fly into KC.
[22] Q: Okay. Now, have you ever had any
[23] dealings with the members of the Tobacco
[24] Institute?
[25] A: You mean the member companies?

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[1] Q: Yes.
[2] A: They're corporations. We know people in
[3] the corporations.
[4] Q: Do you ever attend meetings here in
[5] Washington with people from the member
[6] corporations?
[7] A: At TIDC I have, yes.
[8] Q: What kind of meetings are those?
[9] A: Well, we have a - I've been invited to
[10] what's called coordinating committee.
[11] Q: What's that?
[12] A: It's a group of people from the member
[13] companies who were in charge apparently with
[14] operating the Institute. And so we go in there
[15] sometimes.
[16] MR. POSNER: As you know, our
[17] position is clear. This obviously has nothing to
[18] do with the jurisdictional inquiry, either New
[19] Mexico or anywhere else.
[20] MS. HONDORF: You know, this morning
[21] I asked Mr. Adams about committees, and he never
[22] mentioned coordinating committee.
[23] MR. POSNER: Well, I don't know what
[24] it is you asked Mr. Adams.
[25] THE WITNESS: And that may not be

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[1] the right name now. They've changed names, too.
[2] MR. POSNER: The testimony will
[3] speak for itself.
[4] THE WITNESS: They've changed the
[5] names before and stuff. So, you know -
[6] BY MS. HONDORF:
[7] Q: In your capacity as the regional
[8] vice president - is that correct?
[9] A: Correct.
[10] Q: Do you attend meetings in D.C.?
[11] A: Not regularly.
[12] Q: Do you attend meetings?
[13] A: Well, we come in for staff meetings, and
[14] then, as I mentioned, we've gone to the
[15] coordinating committee a few times.
[16] Q: And that's part of your regular
[17] duties as the regional vice president?
[18] MR. POSNER: I object to the form.
[19] THE WITNESS: When you say
[20] "regular," no, because we don't do that. We
[21] don't come on a regular basis to D.C.
[22] BY MS. HONDORF:
[23] Q: But you attend meetings in D.C. as
[24] part of your job?
[25] A: If Pat asked me to, I of course do, just

Page 3.

[1] like I heard about this, I was told about this,
[2] so I came here.
[3] Q: You know, I wanted to go to Denver.
[4] I'll be honest with you. Who is your boss's
[5] boss?
[6] A: Mr. Sam Chilcote.
[7] Q: Now, I want to get this straight,
[8] because I think we're almost finished. The only
[9] contact you have in the State of New Mexico in
[10] your function as the regional vice president of
[11] the Tobacco Institute is with governmental people
[12] and at receptions for wholesalers, is that
[13] correct?
[14] A: Well, that's essentially correct. I've
[15] gone to a convention once that that was one of my
[16] trips back in like '92. I was able to attend the
[17] New Mexico Wholesaler's Convention. So I did
[18] that. But that was connected with the lobbying
[19] activities.
[20] Q: And you do not distribute any of the
[21] national publication materials that the Tobacco
[22] Institute puts out?
[23] MR. POSNER: In New Mexico?
[24] BY MS. HONDORF:
[25] Q: In New Mexico.

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(1) A: No. I mean, if somebody would call us and
(2) say have you got whatever they asked for, we can
(3) arrange to get it, in the sense of we would call
(4) D.C. and ask D.C. to ship that to them or ship it
(5) to us and we'll give it out. I don't recall that
(6) happening, no.

(7) Q: It's not part of your lobbying
(8) activities to distribute things like Helping
(9) Youth Decide. Helping Youth Say No, is that
(10) correct?

(11) MR. POSNER: I object to the form.

(12) BY MS. HONDORF:

(13) Q: Go ahead and answer.

(14) A: That's correct. Of what you specified,
(15) that's right.

(16) Q: Is it any part of your lobbying
(17) activities to distribute any information on
(18) behalf of the Tobacco Institute? And don't tell
(19) me what it is. Just answer.

(20) MR. POSNER: I object to the form.
(21) That's a very broad question. Is part of his
(22) lobbying activities to distribute any
(23) information?

(24) MS. HONDORF: He just qualified his
(25) answer by saying that he doesn't distribute these

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(1) nationally publicized programs.

(2) MR. POSNER: No, no. He said -
(3) well, the testimony will speak for itself.

(4) MS. HONDORF: It certainly will.

(5) MR. POSNER: He said when people ask
(6) him for these things he tries to make sure that
(7) they get them.

(8) THE WITNESS: And I was referring to
(9) the list that you read.

(10) BY MS. HONDORF:

(11) Q: Now -

(12) A: That's correct.

(13) Q: Do you distribute any type of
(14) information prepared and published by the Tobacco
(15) Institute in your function as a lobbyist or as
(16) the lobbying coordinator for the Tobacco
(17) Institute?

(18) A: Well, some of the stuff we work with is
(19) not published just by the Tobacco Institute.

(20) Q: What sort of information would that
(21) be?

(22) A: We Card materials.

(23) Q: And who publishes that?

(24) A: The National Coalition for Responsible
(25) Retailing. I think that's the name of it.

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(1) Q: But do you distribute that in New
(2) Mexico?

(3) A: Not in New Mexico, no. The question -
(4) nobody has asked. In New Mexico the grocers and
(5) the wholesalers and the retailers, we have
(6) contact with the wholesalers, but historically
(7) we've never had any involvement with the grocers.
(8) I'm talking about from TI, with the grocers and
(9) the retailers.

(10) They've never been involved in our
(11) issues.

(12) MR. POSNER: In New Mexico?

(13) THE WITNESS: In New Mexico. That's
(14) different than other places. So I wanted to make
(15) certain I'm answering your question correctly.

(16) BY MS. HONDORF:

(17) Q: I appreciate that clarification.
(18) But explain to me what the We Card program is.

(19) A: That's a current system of national public
(20) education information that the coalition, of
(21) which TI is a sponsor, puts out across the United
(22) States. Incidentally, of course, it goes into
(23) all 50 states including New Mexico.

(24) I've seen it down there when I've
(25) gone in and bought a can of pop, driving back

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(1) from Santa Fe to Albuquerque. It's on the window
(2) of convenience stores. That is, if you will, the
(3) current effort to try to help retailers not sell
(4) the product to underage children.

(5) Q: And do you know who pays for that
(6) signage?

(7) A: Directly?

(8) Q: Yes.

(9) A: I think they get contributions from their
(10) members in the coalition. TI is one of the
(11) sponsors. I have - if you will, secondhand
(12) hearsay.

(13) Q: Hearsay upon hearsay.

(14) A: Right.

(15) Q: But that's not stuff that you have
(16) sitting in your office and people call you and
(17) say I need some and you send it?

(18) A: Not ordinarily. We keep some in the
(19) office, I think like maybe five packets. They're
(20) these big boxes, and they have a training video
(21) and all kinds of information. Because we do
(22) occasionally get requests. I haven't gotten any
(23) in New Mexico.

(24) Q: If I'm a person in New Mexico who is
(25) made aware of any of this information, I can

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(1) obtain it from you by calling you?
(2) A: If you knew who we were and where we were,
(3) I guess you could, yes.
(4) MR. POSNER: You're talking about
(5) his office in Denver?
(6) MS. HONDORF: Right.
(7) THE WITNESS: Right.
(8) BY MS. HONDORF:
(9) Q: Would I find the Tobacco Institute
(10) listed in the phone book in Denver?
(11) A: We're actually not in Denver. We're in
(12) Parker on the way to Colorado Springs. So
(13) sometimes the phone company doesn't consider us
(14) part of Denver, which is ironic. I don't know.
(15) I haven't looked.
(16) Q: Denver is a cow town, isn't it?
(17) Just kidding. Editorial comment. I'm sorry.
(18) MR. POSNER: Denver is not here to
(19) defend itself, so we'll let them preserve their
(20) objections.
(21) THE WITNESS: Honestly, I haven't
(22) looked in the phone book. We used to be when we
(23) were more metropolitanly located, if you will.
(24) We're in the Parker phone book, I believe.
(25) BY MS. HONDORF:

(1) A: Yes.
(2) MS. HONDORF: Can we take a short
(3) break?
(4) (Recess.)
(5) MS. HONDORF: We needed to have a
(6) discussion on record. Mr. Posner, it's your
(7) position that we cannot ask your client anything
(8) about his lobbying activities other than the fact
(9) that he just conducts lobbying activities, is
(10) that correct?
(11) MR. POSNER: Well, we've made our
(12) position clear.
(13) MS. HONDORF: Make it clear for me
(14) one more time.
(15) MR. POSNER: You've asked him lot of
(16) questioning pertaining to lobbying activities,
(17) and we think you've received the information
(18) you're entitled to get under the law.
(19) MS. HONDORF: I haven't asked him
(20) what in fact he does in the way of lobbying,
(21) because you've told me this morning there are two
(22) outstanding orders which bar me from doing that.
(23) Is that your position?
(24) MR. POSNER: What's the next
(25) question you wanted to ask him?

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(1) Q: Is Parker a big town?
(2) A: No. It's the fastest growing - one of
(3) the fastest growing cities in the county.
(4) Douglas County is like second fastest in the
(5) country.
(6) Q: But you are listed in the phone book
(7) somewhere in Colorado?
(8) A: I think we are. People call us.
(9) Q: If I looked in New Mexico, in
(10) Albuquerque, for a listing for the Institute, is
(11) there anything there?
(12) A: Not that I'm aware of.
(13) Q: And the same thing for Santa Fe?
(14) A: Well, Bob Barberousse is there, and he
(15) would be listed as an attorney. Bob's our
(16) contract lobbyist.
(17) Q: But would there be a listing for the
(18) Tobacco Institute?
(19) A: I don't think so.
(20) Q: You never had any knowledge of any
(21) office in New Mexico that the Tobacco Institute
(22) maintained?
(23) A: Oh. I heard that there was one once. But
(24) it was years ago.
(25) Q: Well before your time?

(1) BY MS. HONDORF:
(2) Q: Mr. Morris, when you go to New
(3) Mexico, what do you do with the legislature?
(4) A: Relatively little with the legislature. I
(5) meet with Mr. Barberousse.
(6) MR. POSNER: If your questions are
(7) getting into the nature and particular scope of
(8) TI's lobbying activity in New Mexico, we don't
(9) think you're entitled to get into that.
(10) We think we've got a couple of court
(11) orders that preclude any discovery into that.
(12) And there are a lot of cases that are decided
(13) under the First Amendment and other relevant
(14) constitutional principles that hold that
(15) questioning about that is inappropriate.
(16) BY MS. HONDORF:
(17) Q: Do you admit that you in fact go to
(18) New Mexico intermittently?
(19) A: Oh, yes. That's true.
(20) Q: For every session of the New Mexico
(21) legislature?
(22) A: No. There have been a couple of years I
(23) haven't made it during session. It's a short
(24) session, and I have other states going very
(25) quickly at the same time. So frankly it's

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(1) difficult to get down there.

(2) Q: When you talked to Mr. Barberousse,
(3) do you talk to him as your attorney?

(4) A: Well, he is an attorney. But he's not
(5) retained to litigate on behalf of the Institute.

(6) Q: And he does not also represent you,
(7) does he?

(8) MR. POSNER: Well, he has testified
(9) that Mr. Barberousse does represent the Tobacco
(10) Institute.

(11) THE WITNESS: Right. And as part of
(12) his, if you will, law practice, he has a
(13) legislative practice that includes representing
(14) the Tobacco Institute.

(15) BY MS. HONDORF:

(16) Q: Can you enumerate for me the issues
(17) that you have gone to New Mexico to address?

(18) MR. POSNER: You mean the
(19) legislative issues?

(20) MS. HONDORF: Yes.

(21) MR. POSNER: Well, that clearly
(22) pertains to TI's lobbying activity in the state.
(23) You're talking with what legislative issues TI is
(24) monitoring and that kind of thing?

(25) MS. HONDORF: What he specifically

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(1) dealt with when he's been there. I can guess
(2) what TI is monitoring.

(3) MR. POSNER: Well, we contend that
(4) that directly implicates the privilege against
(5) disclosing TI's lobbying activities in the state.

(6) BY MS. HONDORF:

(7) Q: You don't have any responsibilities
(8) at all in any state that you represent for
(9) placing advertising or promotion of the Tobacco
(10) Institute into trade journals? And this is any
(11) state that you represent.

(12) MR. POSNER: I object to the
(13) question on any number of grounds. But you can
(14) answer as to New Mexico.

(15) THE WITNESS: We don't advertise or
(16) promote the TI. I mean, when I think - you use
(17) the words "advertise" and "promotion," you think
(18) of putting something out there and that people
(19) are going to read and they're going to find out
(20) about it to sell a product.

(21) We don't sell TI. We're the trade
(22) association. But it is true that some of the
(23) wholesaler associations have in the past put out
(24) convention books. And some retailer groups do in
(25) some of my states. And I'm certain, in fact I

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(1) remember in a couple of states they've put little
(2) things like, thank you, Tobacco Institute, for
(3) your support for the convention.

(4) So when you say do I do any of that
(5) at all, yes, that would fall in there. But it's
(6) not very often.

(7) BY MS. HONDORF:

(8) Q: Have you ever out of your office
(9) paid for the placement of information in any
(10) publication whatsoever to promote the industry's
(11) position on any issue?

(12) MR. POSNER: You can answer that
(13) question just as pertaining to New Mexico, yes or
(14) no.

(15) THE WITNESS: No.

(16) BY MS. HONDORF:

(17) Q: I'll ask you the question for any
(18) other state. And if he instructs you not to
(19) answer, I'll certify the question.

(20) MR. POSNER: You want to know
(21) whether -

(22) MS. HONDORF: In any state he
(23) represents.

(24) MR. POSNER: Whether -

(25) MS. HONDORF: I want to know the

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(1) question I asked him. I don't want it restated
(2) by you. We'll have it read back.

(3) (Witness and counsel confer.)

(4) MR. POSNER: He can answer.

(5) THE WITNESS: Would you read back
(6) the question so I can make certain I understand
(7) it?

(8) (The record was read as requested.)

(9) THE WITNESS: I don't recollect ever
(10) doing that.

(11) MS. HONDORF: Do we want to attach
(12) this -

(13) MR. POSNER: Yes.

(14) MS. HONDORF: - order from -

(15) MR. POSNER: This is from the United
(16) States District Court for the Northern District
(17) of Ohio in the case of Judith Williams versus R.
(18) J. Reynolds Tobacco Company et al. and it's
(19) entered by David D. Dowd, Jr., United States
(20) district judge.

(21) MS. HONDORF: Do you have another
(22) order that you have pending in another case that
(23) we can just mention?

(24) MR. POSNER: There is the
(25) Oklahoma - my understanding is there is - well,

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(1) my colleague, Mr. Davies, can speak to this, but
(2) there is an order to my understanding in the
(3) Oklahoma Attorney General action.

(4) MR. DAVIES: We have several orders.
(5) In addition to the Oklahoma order we have an
(6) order in Tennessee. Same thing. Lobbying,
(7) legislative contacts cannot be taken into account
(8) in the jurisdictional inquiry.

(9) MS. HONDORF: Wait a minute. That's
(10) not the same thing as barring me from asking
(11) questions.

(12) MR. DAVIES: I don't know if the
(13) Tennessee order addresses that specifically. I
(14) know the Oklahoma does.

(15) MS. HONDORF: Can we consider those
(16) two to be late filed exhibits?

(17) MR. POSNER: I don't want to
(18) suggest - I mean, this is not the sole - we
(19) rely on any number of cases on this issue. I'm
(20) perfectly happy to attach - I would like the
(21) Ohio order attached today.

(22) MS. HONDORF: It is attached.

(23) MR. POSNER: And then we will also
(24) attach the Oklahoma order to be late filed.
(25) That's fine.

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(1) MS. HONDORF: Is there something in
(2) Tennessee you believe that -

(3) MR. DAVIES: Yes, I believe so. I
(4) mean, there's any number of them. Do you want me
(5) to attach as late exhibits anything I can think
(6) of that has to do with this issue?

(7) MS. HONDORF: I want orders that you
(8) think bind me.

(9) MR. DAVIES: I don't know.

(10) MS. HONDORF: I don't want cases.

(11) MR. DAVIES: I cannot speak for the
(12) universe of every order that exists.

(13) MS. HONDORF: I understand that.
(14) But you do represent the Tobacco Institute.

(15) MR. DAVIES: Look, I'm aware of the
(16) Oklahoma order, I'm aware of an order in
(17) Tennessee that may or may not be relevant. There
(18) may be others. I'll give you the Oklahoma order.
(19) If the Tennessee order I think is relevant, I'll
(20) give that to you as well.

(21) MS. HONDORF: Fine. That's
(22) perfectly satisfactory.

(23) BY MS. HONDORF:

(24) Q: Mr. Morris, when the Tobacco
(25) Institute issues press releases, do you normally -

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(1) get a copy of those?

(2) A: I guess we do. I don't know that we see
(3) them all.

(4) Q: But you do get press release from -

(5) A: From time to time.

(6) Q: And do they come from Washington?

(7) A: Yes.

(8) Q: Do you have a fax machine?

(9) A: Oh, sure.

(10) Q: Do you have copies of any of those
(11) press releases in your office? Do you keep them?

(12) A: Over a period of time we do. We have a
(13) lot of material in the mail. That's what it
(14) comes through. And we probably have some. I
(15) mean, I couldn't remember off the top of my head
(16) which ones we still have.

(17) Q: What type of information do you
(18) receive from headquarters here in Washington?

(19) A: From D.C.?

(20) Q: Yes.

(21) A: Oh, we get things like - they keep track
(22) of press clippings of interest to the industry
(23) and to the Institute. We get those. We get
(24) correspondence from D.C. I get letters from Pat.
(25) I get budgetary, administrative matters, that

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(1) kind of thing.

(2) Q: Do you have any film strips or slide
(3) shows or anything that you have to present to
(4) anybody in New Mexico?

(5) MR. POSNER: Lack of foundation. I
(6) object to the form.

(7) MS. HONDORF: I'll start over.

(8) BY MS. HONDORF:

(9) Q: Do you know of any slide
(10) presentations or film strips that the Tobacco
(11) Institute has available for public consumption?

(12) A: That TI has?

(13) Q: Yes.

(14) MR. POSNER: In Colorado?

(15) MS. HONDORF: In anywhere.

(16) THE WITNESS: Well, the We Card, I
(17) believe the We Card kits have videos for use in
(18) training the retailers. There's one for like
(19) grocery stores and one for convenience stores.
(20) And I think we probably have those.

(21) I'm trying to remember - we may have - we may
(22) have had in years past videos that got shipped
(23) back to D.C. when the reorganizations occurred
(24) and we moved the office.

(25) Those could have come out of our

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(1) files in years past. Currently, other than the
(2) We Card, I don't recall TI sending any videos
(3) that TI produced.

(4) **BY MS. HONDORF:**

(5) **Q:** Are you aware of any program that
(6) the TI maintains for people employed by the
(7) Tobacco Institute to make speeches around the
(8) country or in New Mexico?

(9) **A:** Are you talking about the public affairs
(10) folks?

(11) **Q:** Could be. Is that where that duty
(12) would lie?

(13) **A:** We do have spokespeople that every day or
(14) every other day they're in the paper or on TV.
(15) It used to be Brennan Dawson, now it's Tom Lauria
(16) and Walker Merryman. I know those guys talk a
(17) lot to reporters and give interviews on talk
(18) radio and those kind of things.

(19) **Q:** Are you aware that any of those
(20) folks have come to New Mexico for that purpose?

(21) **A:** It's possible. I think there may have
(22) been somebody who came into New Mexico once in
(23) years past.

(24) **Q:** Here we have Tom Lauria. Who is
(25) Jollian Davidson?

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(1) **A:** I think she was involved - the lady out
(2) of the PTA who was involved with the It's the Law
(3) program in the early '90s. I never met her.

(4) **Q:** This document is entitled "Youth
(5) initiatives media tour." Would you have had
(6) anything to do with any of these activities?

(7) **MR. POSNER:** Just for the record,
(8) the witness has a document that we produced, TICN
(9) number 3. It also was produced in the Minnesota
(10) Attorney General action. It bears a Bates
(11) number, TIMN 406655 and consecutive numbers.

(12) **THE WITNESS:** I recall that back
(13) sometime in the '90s they did this. They came
(14) out.

(15) **BY MS. HONDORF:**

(16) **Q:** Did you accompany them?

(17) **A:** No.

(18) **Q:** So it's not part of your lobbying
(19) activities to accompany speakers when they come
(20) to your states?

(21) **A:** Like these folks? No.

(22) **MR. POSNER:** I object to form. He
(23) said he didn't accompany them, so it's not part
(24) of his activities.

(25) **THE WITNESS:** No.

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(1) (Morris Deposition Exhibits Numbers
(2) 3 and 4 were marked for identification.)

(3) **BY MS. HONDORF:**

(4) **Q:** Mr. Morris, do you consider all of
(5) your activities for the Tobacco Institute to be
(6) done as a lobbyist?

(7) **A:** I'm not a registered - at this point I'm
(8) not a registered lobbyist in any of my states. I
(9) coordinate the lobbying activities. And so I
(10) usually think of lobbying in terms of directly
(11) lobbying legislators.

(12) I don't do that. It's occasional
(13) I'll run across and visit with them and meet
(14) them, but that's not part of our job.

(15) **Q:** The coordination of lobbying
(16) activities, I'm having trouble understanding what
(17) that means.

(18) **A:** I have eight lobbyists - actually more
(19) than that, but I have lobbyists that the TI
(20) employs and contracts with in my eight states.
(21) So I'm in charge of coordinating, making certain
(22) that, A, I know what's going on, and that I'm
(23) working with those folks.

(24) **Q:** And is it part of your duties to
(25) make sure that each one of those folks knows the

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(1) tobacco industry's position on any given issue
(2) that may arise?

(3) **MR. POSNER:** You can answer that as
(4) a yes or no question.

(5) **THE WITNESS:** Yes.

(6) **BY MS. HONDORF:**

(7) **Q:** We went back and looked at your
(8) testimony, and we were curious about your use of
(9) the word "mission." I'm going to get the court
(10) reporter to read you back your answer and then
(11) ask you what the word means.

(12) (The record was read as requested.)

(13) **THE WITNESS:** Okay.

(14) **MR. POSNER:** What's the question?

(15) **BY MS. HONDORF:**

(16) **Q:** What does the word "mission" in the
(17) context of that answer mean?

(18) **A:** My work.

(19) **Q:** And your mission is what?

(20) **A:** To represent TI and the interests that it
(21) has on tobacco related issues.

(22) **Q:** Does "mission" mean to impart the
(23) Tobacco Institute's views on a given issue in the
(24) state that you represent?

(25) **MR. POSNER:** I object to the form.

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(1) He answered what he meant by his use of the word
(2) "mission" in his prior answer.

(3) BY MS. HONDORF:

(4) Q: Go ahead and answer.

(5) A: Yes. I believe that part of what I do is
(6) to instruct the lobbyist in terms of the lobbying
(7) related activities.

(8) Q: And the instructions that you give
(9) the lobbyist come from Washington, is that
(10) correct?

(11) A: Those are set by higher authorities in the
(12) Institute, that's correct.

(13) Q: And the higher authorities reside
(14) here in Washington, correct?

(15) A: Yes. Well, you mean live in Washington,
(16) D.C.?

(17) Q: No. I'm talking about your
(18) headquarters. They come from the Tobacco
(19) Institute in Washington, is that correct?

(20) A: Yes. Yes. Which is based in Washington,
(21) D.C. That's correct.

(22) MS. HONDORF: I think I'm finished.
(23) Any questions?

(24) (Recess.)

(25) MR. POSNER: Let's mark as number 5,

(1) DISTRICT OF COLUMBIA, to wit:
(2) I, Lee A. Bursten, before whom the
(3) foregoing deposition was taken, do hereby certify
(4) that the within-named witness personally appeared
(5) before me at the time and place herein set out,
(6) and after having been duly sworn by me, according
(7) to law, was examined by counsel.

(8) I further certify that the examination
(9) was recorded stenographically by me and this
(10) transcript is a true record of the proceedings.

(11) I further certify that I am not of
(12) counsel to any party, nor an employee of counsel,
(13) nor related to any party, nor in any way
(14) interested in the outcome of this action.

(15) As witness my hand and notarial seal
(16) this __ day of __, 1997.

(17)
(18)
(19) LEE A. BURSTEN

(20) Notary Public

(21) MY COMMISSION EXPIRES: DC - 5/14/00

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(1) this is an order from the Circuit Court for Knox
(2) County in Tennessee that we believe relates
(3) directly to the issue of discovery context about
(4) lobbying activities.

(5) (Morris Deposition Exhibit Number 5
(6) was marked for identification.)

(7) MS. HONDORF: The Oklahoma order is
(8) relatively new?

(9) MR. DAVIES: Yes.

(10) MS. HONDORF: It's in one of the
(11) class actions?

(12) MR. DAVIES: 1997, in the Attorney
(13) General case, the jurisdictional discovery
(14) context, where the Court granted our motion for a
(15) protective order to preclude questioning to our
(16) lobbyists about lobbying activities in Oklahoma.

(17) MS. HONDORF: Fair enough.

(18) (Thereupon the proceedings were
(19) adjourned at 3:10 p.m.)

(1) CERTIFICATE OF DEPONENT
(2) I hereby certify that I have read and
(3) examined the foregoing transcript, and the same
(4) is a true and accurate record of the testimony
(5) given by me.

(6) Any additions or corrections that I
(7) feel are necessary, I will attach on a separate
(8) sheet of paper to the original transcript.

(9)
(10)
(11) RANDY MORRIS

(12) I hereby certify that the individual
(13) representing himself/herself to be the
(14) above-named individual, appeared before me this
(15) _____ day of _____, 1997, and
(16) executed the above certificate in my presence.

(17)
(18)
(19) NOTARY PUBLIC IN AND FOR

(20)
(21) MY COMMISSION EXPIRES:

(1) WITNESS: RANDY MORRIS
(2) DATE: May 15, 1997
(3) CASE: Connor v. American Tobacco
(4) Please note any errors and the
(5) corrections thereof on this errata sheet. The
(6) rules require a reason for any change or
(7) correction. It may be general, such as "To
(8) correct stenographic error," or "To clarify the
(9) record," or "To conform with the facts."
(10) PAGE LINE CORRECTION REASON FOR CHANGE
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